

**U.S. Department of Labor**

Office of Administrative Law Judges  
800 K Street, NW, Suite 400-N  
Washington, DC 20001-8002

(202) 693-7300  
(202) 693-7365 (FAX)



**Issue Date: 01 November 2010**

**OALJ Case No.: 2011-TLC-00012**

**ETA Case No.: C-10253-25007**

*In the Matter of*

**STEVE MARTIN,**  
*Employer*

Certifying Officer: William L. Carlson  
Chicago Processing Center

Before: **WILLIAM S. COLWELL**  
Associate Chief Administrative Law Judge

**DECISION AND ORDER**

On October 18, 2010, Steve Martin (“the Employer”) filed a request for review of the Certifying Officer’s determination in the above-captioned temporary agricultural labor certification matter. *See* 8 U.S.C. §§ 1101(a)(15)(H)(ii)(a), 1184(c)(1); 20 C.F.R. § 655.115(a) (2009). On October 13, 2010, the Office of Administrative Law Judges received the Administrative File from the Certifying Officer (“the CO”).<sup>1</sup> In administrative review cases, the administrative law judge has five working days after receiving the file to “review the record for legal sufficiency” and issue a decision. § 655.115(a).

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<sup>1</sup> The decision was not issued within five working days after receiving the appeal file because the Employer sent the request for review to the CNPC rather than to BALCA. Once the case was docketed on October 18, 2010, the decision was further delayed without objection from the Employer while the CO and the Employer attempted to resolve the matter.

## Statement of the Case

The facts of the case are undisputed. On September 10, 2010, the United States Department of Labor's Employment and Training Administration ("ETA") received an application from Steve Martin ("the Employer") for temporary labor certification. AF 69-77.<sup>2</sup> The CO issued a Notice of Acceptance ("NOA") on Friday, October 1, 2010.<sup>3</sup> The NOA required the Employer to submit its recruitment report and proof of its workers' compensation report by Monday, October 4, 2010. AF 10. The NOA was sent via overnight mail, and according to tracking information provided by the Employer, the NOA was delivered on Monday, October 4, 2010, at 3:59 p.m. The Employer did not respond to the NOA, and on October 5, 2010, the CO denied the Employer's application based on the Employer's failure to submit a recruitment report or proof of its workers' compensation insurance. AF 6. The Employer's appeal followed.

## Discussion

The H-2A regulations provide that an employer must submit a written recruitment report "on a date specified by the CO in the Notice of Acceptance." 20 C.F.R. § 655.156(a). Additionally, the regulations guiding the content requirements of the Notice of Acceptance require the CO to grant or deny the employer's application within "30 calendar days before the date of need." 20 C.F.R. §655.143.

The H-2A regulations fail to provide guidance on how long the Employer should be allowed to submit the information required in the NOA. While the establishment of the deadline should generally be in the CO's discretion, it is unreasonable to require the Employer to respond to an NOA on the date of receipt, especially given that the Employer did not receive the NOA until the end of the business day. Therefore, the CO improperly denied the Employer's application, and the case should be remanded. Upon remand, the CO should allow adequate time for the Employer to respond to the NOA before a Final Determination is made.

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<sup>2</sup> Citations to the 93-page Administrative File will be abbreviated "AF" followed by the page number.

<sup>3</sup> The CO issued a Notice of Deficiency ("NOD") on September 16, 2010. AF 46-62 The NOD was not relevant to this appeal.

**Order**

Accordingly, it is hereby **ORDERED** that the decision of the Certifying Officer is **REMANDED** for further proceedings consistent with this decision.

For the Board:

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**WILLIAM S. COLWELL**

Associate Chief Administrative Law Judge